

PROVIDING FOR CONSIDERATION OF H.R. 1542, INTERNET  
FREEDOM AND BROADBAND DEPLOYMENT ACT OF 2001

FEBRUARY 26, 2002.—Referred to the House Calendar and ordered to be printed

Mr. LINDER, from the Committee on Rules, submitted the following

R E P O R T

[To accompany H. Res. 350]

The Committee on Rules, having had under consideration House Resolution 350, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 1542, to deregulate the Internet and high speed data services, and for other purposes. The rule provides 1 hour and 20 minutes of general debate, with one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce and 20 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary.

The rule waives all points of order against consideration of the bill. The rule provides that the amendment in the nature of a substitute printed in Part A of this report shall be considered as adopted in the House and in the Committee of the Whole. The rule provides that the bill, as amended, shall be considered as the original bill for the purpose of further amendment and shall be considered as read.

The rule provides that no further amendment to the bill, as amended, shall be in order except those printed in Part B of this report. Further, the amendments printed in Part B of this report may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment except as specified in this report, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole.

The rule waives all points of order against amendments printed in Part B of this report. Finally, the rule provides one motion to recommit with or without instructions.

AMENDMENTS MADE IN ORDER UNDER THE RULE

(Summaries derived from information provided by sponsors.)

*Part A—Summary of Amendment To Be Considered as Adopted*

Consists of the text of H.R. 1542 as reported by the Energy and Commerce Committee modified by the amendment offered by Mr. Tauzin and Mr. Sensenbrenner which clarifies that the antitrust laws are not repealed by, not precluded by, not diminished by and not incompatible with the Communications Act of 1934 or the Telecommunications Act of 1996. Requires a Bell Operating Company to notify the Department of Justice thirty days prior to offering an interLATA high speed data or Internet backbone service originating in any in-region State in which the company has not received the authority from the FCC to provide interLATA services.

*Part B—Summary of Amendments Made in Order*

Upton/Green (TX): Increases the FCC's forfeiture penalties for phone companies which violate the telecommunications law by elevating the current cap from \$1.2 million to \$10 million and increasing the current \$120,000 fine per violation or each day of a continuing violation to \$1 million. For repeat offenders, the amendment doubles these increased forfeiture penalties to \$2 million per violation or each day of a continuing violation, capped at \$20 million. The amendment doubles from 1 year to 2 years the statute of limitations for the FCC to bring enforcement actions against phone companies, gives the FCC clear, statutory "cease and desist" authority to use against phone companies which violate any of the telecommunications laws and directs the FCC to study the impact of the enhanced penalties under the bill and report back to Congress within one year after enactment. (40 minutes)

Cannon/Conyers: Line by line change to H.R. 1542: protects competitive investments by preserving the existing rules for telecommunications services that the competitive local exchange carriers relied upon when making investments and preserves State authority and consumer safeguards from the broad preemption of such authority granted under H.R. 1542. Preserves State authority and consumer safeguards from the preemption of such authority granted under H.R. 1542. (60 minutes)

Buyer/Towns Substitute Amendment for the Amendment offered by Cannon/Conyers:

**PART A – TEXT OF AMENDMENT CONSIDERED AS ADOPTED**

Strike out all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Internet Freedom and  
3 Broadband Deployment Act of 2001”.

**4 SEC. 2. FINDINGS AND PURPOSE.**

5 (a) FINDINGS.—Congress finds the following:

6 (1) Internet access services are inherently inter-  
7 state and international in nature, and should there-  
8 fore not be subject to regulation by the States.

9 (2) The imposition of regulations by the Fed-  
10 eral Communications Commission and the States  
11 has impeded the rapid delivery of high speed Inter-  
12 net access services and Internet backbone services to  
13 the public, thereby reducing consumer choice and  
14 welfare.

15 (3) The Telecommunications Act of 1996 rep-  
16 resented a careful balance between the need to open  
17 up local telecommunications markets to competition  
18 and the need to increase competition in the provision  
19 of interLATA voice telecommunications services.

20 (4) In enacting the prohibition on Bell oper-  
21 ating company provision of interLATA services,

1 Congress recognized that certain telecommunications  
2 services have characteristics that render them in-  
3 compatible with the prohibition on Bell operating  
4 company provision of interLATA services, and ex-  
5 empted such services from the interLATA prohibi-  
6 tion.

7 (5) High speed data services and Internet back-  
8 bone services constitute unique markets that are  
9 likewise incompatible with the prohibition on Bell  
10 operating company provision of interLATA services.

11 (6) Since the enactment of the Telecommuni-  
12 cations Act of 1996, the Federal Communications  
13 Commission has construed the prohibition on Bell  
14 operating company provision of interLATA services  
15 in a manner that has impeded the development of  
16 advanced telecommunications services, thereby lim-  
17 iting consumer choice and welfare.

18 (7) Internet users should have choice among  
19 competing Internet service providers.

20 (8) Internet service providers should have the  
21 right to interconnect with high speed data networks  
22 in order to provide service to Internet users.

23 (b) PURPOSES.—It is therefore the purpose of this  
24 Act to provide market incentives for the rapid delivery of  
25 advanced telecommunications services—

1 (1) by deregulating high speed data services,  
2 Internet backbone services, and Internet access serv-  
3 ices;

4 (2) by clarifying that the prohibition on Bell op-  
5 erating company provision of interLATA services  
6 does not extend to the provision of high speed data  
7 services and Internet backbone services;

8 (3) by ensuring that consumers can choose  
9 among competing Internet service providers; and

10 (4) by ensuring that Internet service providers  
11 can interconnect with competitive high speed data  
12 networks in order to provide Internet access service  
13 to the public.

14 **SEC. 3. DEFINITIONS**

15 (a) AMENDMENTS.—Section 3 of the Communica-  
16 tions Act of 1934 (47 U.S.C. 153) is amended—

17 (1) by redesignating paragraph (20) as para-  
18 graph (21);

19 (2) by redesignating paragraphs (21) through  
20 (52) as paragraphs (26) through (57), respectively;

21 (3) by inserting after paragraph (19) the fol-  
22 lowing new paragraph:

23 “(20) HIGH SPEED DATA SERVICE.—The term  
24 ‘high speed data service’ means any service that con-  
25 sists of or includes the offering of a capability to

1 transmit, using a packet-switched or successor tech-  
2 nology, information at a rate that is generally not  
3 less than 384 kilobits per second in at least one di-  
4 rection. Such term does not include special access  
5 service offered through dedicated transport links be-  
6 tween a customer's premises and an interexchange  
7 carrier's switch or point of presence.”;

8 (4) by inserting after paragraph (21) the fol-  
9 lowing new paragraphs:

10 “(22) INTERNET.—The term ‘Internet’ means  
11 collectively the myriad of computer and tele-  
12 communications facilities, including equipment and  
13 operating software, which comprise the inter-  
14 connected world-wide network of networks that em-  
15 ploy the Transmission Control Protocol/Internet  
16 Protocol, or any predecessor or successor protocols  
17 to such protocol, to communicate information of all  
18 kinds by wire or radio.

19 “(23) INTERNET ACCESS SERVICE.—The term  
20 ‘Internet access service’ means a service that com-  
21 bines computer processing, information storage, pro-  
22 tocol conversion, and routing with transmission to  
23 enable users to access Internet content and services.

24 “(24) INTERNET BACKBONE.—The term ‘Inter-  
25 net backbone’ means a network that carries Internet

1 traffic over high-capacity long-haul transmission fa-  
2 cilities and that is interconnected with other such  
3 networks via private peering relationships.

4 “(25) INTERNET BACKBONE SERVICE.—The  
5 term ‘Internet backbone service’ means any  
6 interLATA service that consists of or includes the  
7 transmission by means of an Internet backbone of  
8 any packets, and shall include related local  
9 connectivity.”.

10 (b) CONFORMING AMENDMENTS.—

11 (1) Section 230(f) of the Communications Act  
12 of 1934 (47 U.S.C. 230(f)) is amended—

13 (A) by striking paragraph (1); and

14 (B) by redesignating paragraphs (2)  
15 through (4) as paragraphs (1) through (3), re-  
16 spectively.

17 (2) Section 223(h)(2) of such Act (47 U.S.C.  
18 223(h)(2)) is amended by striking “230(f)(2)” and  
19 inserting “230(f)(1)”.

20 **SEC. 4. LIMITATION ON AUTHORITY TO REGULATE HIGH**  
21 **SPEED DATA SERVICES.**

22 (a) IN GENERAL.—Part I of title II of the Commu-  
23 nications Act of 1934 (47 U.S.C. 201 et seq.) is amended  
24 by adding at the end the following new section:

1 **“SEC. 232. PROVISION OF HIGH SPEED DATA SERVICES.**

2       “(a) FREEDOM FROM REGULATION.—Except to the  
3 extent that high speed data service, Internet backbone  
4 service, and Internet access service are expressly referred  
5 to in this Act, neither the Commission, nor any State,  
6 shall have authority to regulate the rates, charges, terms,  
7 or conditions for, or entry into the provision of, any high  
8 speed data service, Internet backbone service, or Internet  
9 access service, or to regulate any network element to the  
10 extent it is used in the provision of any such service; nor  
11 shall the Commission impose or require the collection of  
12 any fees, taxes, charges, or tariffs upon such service.

13       “(b) SAVINGS PROVISION.—Nothing in this section  
14 shall be construed to limit or affect the authority of any  
15 State to regulate circuit-switched telephone exchange serv-  
16 ices, nor affect the rights of cable franchise authorities  
17 to establish requirements that are otherwise consistent  
18 with this Act.

19       “(c) CONTINUED ENFORCEMENT OF ESP EXEMP-  
20 TION, UNIVERSAL SERVICE RULES PERMITTED.—Noth-  
21 ing in this section shall affect the ability of the Commis-  
22 sion to retain or modify—

23               “(1) the exemption from interstate access  
24 charges for enhanced service providers under Part  
25 69 of the Commission’s regulations, and the require-

1       ments of the MTS/WATS Market Structure Order  
2       (97 FCC 2d 682, 715 (1983)); or

3               “(2) rules issued pursuant to section 254.”.

4       (b) CONFORMING AMENDMENT.—Section 251 of the  
5       Communications Act of 1934 (47 U.S.C. 251) is amended  
6       by adding at the end thereof the following new subsection:

7       “(j) EXEMPTION.—

8               “(1) ACCESS TO NETWORK ELEMENTS FOR  
9       HIGH SPEED DATA SERVICE.—

10               “(A) LIMITATION.—Subject to subpara-  
11       graphs (B), (C), and (D) of this paragraph, nei-  
12       ther the Commission nor any State shall require  
13       an incumbent local exchange carrier to provide  
14       unbundled access to any network element for  
15       the provision of any high speed data service.

16               “(B) PRESERVATION OF REGULATIONS  
17       AND LINE SHARING ORDER.—Notwithstanding  
18       subparagraph (A), the Commission shall, to the  
19       extent consistent with subsections (c)(3) and  
20       (d)(2), require the provision of unbundled ac-  
21       cess to those network elements described in sec-  
22       tion 51.319 of the Commission’s regulations  
23       (47 C.F.R. 51.319), as—

24               “(i) in effect on January 1, 1999; and

1           “(ii) subject to subparagraphs (C)  
2           and (D), as modified by the Commission’s  
3           Line Sharing Order.

4           “(C) EXCEPTIONS TO PRESERVATION OF  
5           LINE SHARING ORDER.—

6           “(i) UNBUNDLED ACCESS TO REMOTE  
7           TERMINAL NOT REQUIRED.—An incumbent  
8           local exchange carrier shall not be required  
9           to provide unbundled access to the high  
10          frequency portion of the loop at a remote  
11          terminal.

12          “(ii) CHARGES FOR ACCESS TO HIGH  
13          FREQUENCY PORTION.—The Commission  
14          and the States shall permit an incumbent  
15          local exchange carrier to charge requesting  
16          carriers for the high frequency portion of  
17          a loop an amount equal to which such in-  
18          cumbent local exchange carrier imputes to  
19          its own high speed data service.

20          “(D) LIMITATIONS ON REINTERPRETATION  
21          OF LINE SHARING ORDER.—Neither the Com-  
22          mission nor any State Commission shall con-  
23          strue, interpret, or reinterpret the Commission’s  
24          Line Sharing Order in such manner as would  
25          expand an incumbent local exchange carrier’s

1 obligation to provide access to any network ele-  
2 ment for the purpose of line sharing.

3 “(E) AUTHORITY TO REDUCE ELEMENTS  
4 SUBJECT TO REQUIREMENT.—This paragraph  
5 shall not prohibit the Commission from modi-  
6 fying the regulation referred to in subparagraph  
7 (B) to reduce the number of network elements  
8 subject to the unbundling requirement, or to  
9 forbear from enforcing any portion of that reg-  
10 ulation in accordance with the Commission’s  
11 authority under section 706 of the Tele-  
12 communications Act of 1996, notwithstanding  
13 any limitation on that authority in section 10 of  
14 this Act.

15 “(F) PROHIBITION ON DISCRIMINATORY  
16 SUBSIDIES.—Any network element used in the  
17 provision of high speed data service that is not  
18 subject to the requirements of subsection (c)  
19 shall not be entitled to any subsidy, including  
20 any subsidy pursuant to section 254, that is not  
21 provided on a nondiscriminatory basis to all  
22 providers of high speed data service and Inter-  
23 net access service. This prohibition on discrimi-  
24 natory subsidies shall not be interpreted to au-  
25 thorize or require the extension of any subsidy

1 to any provider of high speed data service or  
2 Internet access service.

3 “(2) RESALE.—For a period of three years  
4 after the enactment of this subsection, an incumbent  
5 local exchange carrier that provides high speed data  
6 service shall have a duty to offer for resale any such  
7 service at wholesale rates in accordance with sub-  
8 section (c)(4). After such three-year period, such  
9 carrier shall offer such services for resale pursuant  
10 to subsection (b)(1).

11 “(3) DEFINITIONS.—For purposes of this  
12 subsection—

13 “(A) the ‘Commission’s Line Sharing  
14 Order’ means the Third Report and Order in  
15 CC Docket No. 98–147 and the Fourth Report  
16 and Order in CC Docket 96–98 (FCC 99–355),  
17 as adopted November 18, 1999, and without re-  
18 gard to any clarification or interpretation in the  
19 further notice of proposed rulemaking in such  
20 Dockets adopted January 19, 2001 (FCC 01–  
21 26); and

22 “(B) the term ‘remote terminal’ means an  
23 accessible terminal located outside of the cen-  
24 tral office to which analog signals are carried  
25 from customer premises, in which such signals

1           are converted to digital, and from which such  
2           signals are carried, generally over fiber, to the  
3           central office.”.

4           (c) **PRESERVATION OF EXISTING INTERCONNECTION**  
5 **AGREEMENTS.**—Nothing in the amendments made by this  
6 section—

7           (1) shall be construed to permit or require the  
8           abrogation or modification of any interconnection  
9           agreement in effect on the date of enactment of this  
10          section during the term of such agreement, except  
11          that this paragraph shall not apply to any inter-  
12          connection agreement beyond the expiration date of  
13          the existing current term contained in such agree-  
14          ment on the date of enactment of this section, with-  
15          out regard to any extension or renewal of such  
16          agreement; or

17          (2) affects the implementation of any change of  
18          law provision in any such agreement.

19 **SEC. 5. INTERNET CONSUMERS FREEDOM OF CHOICE.**

20          Part I of title II of the Communications Act of 1934,  
21 as amended by section 4, is amended by adding at the  
22 end the following new section:

1 **“SEC. 233. INTERNET CONSUMERS FREEDOM OF CHOICE.**

2       “(a) PURPOSE.—It is the purpose of this section to  
3 ensure that Internet users have freedom of choice of Inter-  
4 net service provider.

5       “(b) OBLIGATIONS OF INCUMBENT LOCAL EX-  
6 CHANGE CARRIERS.—Each incumbent local exchange car-  
7 rier has the duty to provide—

8           “(1) Internet users with the ability to subscribe  
9 to and have access to any Internet service provider  
10 that interconnects with such carrier’s high speed  
11 data service;

12           “(2) any Internet service provider with the  
13 right to acquire the facilities and services necessary  
14 to interconnect with such carrier’s high speed data  
15 service for the provision of Internet access service;

16           “(3) any Internet service provider with the abil-  
17 ity to collocate equipment in accordance with the  
18 provisions of section 251, to the extent necessary to  
19 achieve the objectives of paragraphs (1) and (2) of  
20 this subsection; and

21           “(4) any provider of high speed data services,  
22 Internet backbone service, or Internet access service  
23 with special access for the provision of Internet ac-  
24 cess service within a period no longer than the pe-  
25 riod in which such incumbent local exchange carrier

1 provides special access to itself or any affiliate for  
2 the provision of such service.

3 “(c) DEFINITIONS.—As used in this section—

4 “(1) INTERNET SERVICE PROVIDER.—The term  
5 ‘Internet service provider’ means any provider of  
6 Internet access service.

7 “(2) INCUMBENT LOCAL EXCHANGE CAR-  
8 RIER.—The term ‘incumbent local exchange carrier’  
9 has the same meaning as provided in section 251(h).

10 “(3) SPECIAL ACCESS SERVICE.—The term  
11 ‘special access service’ means the provision of dedi-  
12 cated transport links between a customer’s premises  
13 and the switch or point of presence of a high speed  
14 data service provider, Internet backbone service pro-  
15 vider, or Internet service provider.”.

16 **SEC. 6. INCIDENTAL INTERLATA PROVISION OF HIGH**  
17 **SPEED DATA AND INTERNET BACKBONE**  
18 **SERVICES.**

19 (a) INCIDENTAL INTERLATA SERVICE PER-  
20 MITTED.—Section 271(g) of the Communications Act of  
21 1934 (47 U.S.C. 271(g)) is amended—

22 (1) by striking “or” at the end of paragraph  
23 (5);

24 (2) by striking the period at the end of para-  
25 graph (6) and inserting “; or”; and

1           (3) by adding at the end thereof the following  
2           new paragraph:

3           “(7) of high speed data service or Internet  
4           backbone service.”.

5           (b) PROHIBITION ON PROVISION OF VOICE TELE-  
6           PHONE SERVICES.—Section 271 of such Act is amended  
7           by adding at the end thereof the following new subsection:

8           “(k) PROHIBITION ON PROVISION OF VOICE TELE-  
9           PHONE SERVICES.—Until the date on which a Bell oper-  
10          ating company is authorized to offer interLATA services  
11          originating in an in-region State in accordance with the  
12          provisions of this section, such Bell operating company of-  
13          fering any high speed data service or Internet backbone  
14          service pursuant to the provisions of paragraph (7) of sub-  
15          section (g) may not, in such in-region State provide  
16          interLATA voice telecommunications service, regardless of  
17          whether there is a charge for such service, by means of  
18          the high speed data service or Internet backbone service  
19          provided by such company.”.

20          (c) NOTICE TO ATTORNEY GENERAL.—Section 271  
21          of such Act is further amended by adding at the end the  
22          following new subsection:

23          “(l) NOTICE TO ATTORNEY GENERAL.—

24                  “(1) STATEMENT REQUIRED.—Not less than 30  
25          days before commencing to offer any interLATA

1 high speed data service or Internet backbone service  
2 originating in an in-region State pursuant to para-  
3 graph (7) of subsection (g), a Bell operating com-  
4 pany shall submit to the Attorney General a state-  
5 ment that

6 “(A) expresses the intention to commence  
7 providing such service in such State;

8 “(B) provides a description of the service  
9 to be offered; and

10 “(C) identifies the geographic region with-  
11 in the State in which the service will be offered,  
12 if the service is not going to be offered State-  
13 wide.

14 “(2) ADDITIONAL CONTENTS PROHIBITED.—  
15 The Attorney General may not require a statement  
16 under this subsection to contain any additional in-  
17 formation other than that specified in subparagraph  
18 (A), (B), and (C) of paragraph (1).

19 “(3) CONFIDENTIAL TREATMENT OF STATE-  
20 MENTS.—A statement submitted to the Attorney  
21 General under this subsection shall be exempt from  
22 disclosure under section 552 of title 5, United States  
23 Code, and no such statement may be made public,  
24 except as may be relevant to any administrative or  
25 judicial action or proceeding.”.

1 (d) CONFORMING AMENDMENTS.—

2 (1) Section 272(a)(2)(B)(i) of such Act is  
3 amended to read as follows:

4 “(i) incidental interLATA services de-  
5 scribed in paragraphs (1), (2), (3), (5),  
6 (6), and (7) of section 271(g);”.

7 (2) Section 272(a)(2)(C) of such Act is re-  
8 pealed.

9 **SEC. 7. DEPLOYMENT OF BROADBAND SERVICES.**

10 Part III of title II of the Communications Act of  
11 1934 is amended by inserting after section 276 (47 U.S.C.  
12 276) the following new section:

13 **“SEC. 277. DEPLOYMENT OF BROADBAND SERVICES.**

14 “(a) DEPLOYMENT REQUIRED.—Each Bell operating  
15 company and its affiliates shall deploy high speed data  
16 services in each State in which such company or affiliate  
17 is an incumbent local exchange carrier (as such term is  
18 defined in section 251(h)) in accordance with the require-  
19 ments of this section.

20 “(b) DEPLOYMENT REQUIREMENTS.—

21 “(1) MILEPOSTS FOR DEPLOYMENT.—A Bell  
22 operating company or its affiliate shall deploy high  
23 speed data services by attaining high speed data ca-  
24 pability in its central offices in each State to which  
25 subsection (a) applies. Such company or affiliate

1 shall attain such capability in accordance with the  
2 following schedule:

3 “(A) Within one year after the date of en-  
4 actment of this section, such company or affil-  
5 iate shall attain high speed data capability in  
6 not less than 20 percent of such central offices  
7 in such State.

8 “(B) Within 2 years after the date of en-  
9 actment of this section, such company or affil-  
10 iate shall attain high speed data capability in  
11 not less than 40 percent of such central offices  
12 in such State.

13 “(C) Within 3 years after the date of en-  
14 actment of this section, such company or affil-  
15 iate shall attain high speed data capability in  
16 not less than 70 percent of such central offices  
17 in such State.

18 “(D) Within 5 years after the date of en-  
19 actment of this section, such company or affil-  
20 iate shall attain high speed data capability in  
21 not less than 100 percent of such central offices  
22 in such State.

23 “(2) HIGH SPEED DATA CAPABILITY.—For pur-  
24 poses of paragraph (1), a central office shall be con-  
25 sidered to have attained high speed capability if—

1           “(A)(i) such central office is equipped with  
2 high speed data multiplexing capability; and

3           “(ii) each upgradeable customer loop that  
4 originates or terminates in such central office is  
5 upgraded promptly upon receipt of a customer  
6 request for such upgrading, as necessary to per-  
7 mit transmission of high speed data service (in-  
8 cluding any conditioning of the loop);

9           “(B) each customer served by such central  
10 office (without regard to the upgradeability or  
11 length of the customer’s loop) is able to obtain  
12 the provision of high speed data service from  
13 such Bell operating company or its affiliate by  
14 means of an alternative technology that does  
15 not involve the use of the customer’s loop; or

16           “(C) each such customer is able to obtain  
17 the provision of high speed data service by one  
18 or the other of the means described in subpara-  
19 graphs (A) and (B).

20           “(3) UPGRADEABLE LOOPS.—For purposes of  
21 paragraph (2), a customer loop is upgradeable if—

22           “(A) such loop is less than 15,000 feet in  
23 length (from the central office to the customer’s  
24 premises along the line); and

1           “(B) such loop can, with or without condi-  
2           tioning, transmit high speed data services with-  
3           out such transmission on such loop causing sig-  
4           nificant degradation of voice service.

5           “(c) AVAILABILITY OF REMEDIES.—

6           “(1) FORFEITURE PENALTIES.—A Bell oper-  
7           ating company or its affiliate that fails to comply  
8           with this section shall be subject to the penalties  
9           provided in section 503(b)(2). In determining wheth-  
10          er to impose a forfeiture penalty, and in determining  
11          the amount of any forfeiture penalty under section  
12          503(b)(2)(D), the Commission shall take into con-  
13          sideration the extent to which the requirements of  
14          this section are technically infeasible.

15          “(2) JURISDICTION.—The Commission shall  
16          have exclusive jurisdiction to enforce the require-  
17          ments of this section, except that any State commis-  
18          sion may file a complaint with the Commission seek-  
19          ing the imposition of penalties as provided in para-  
20          graph (1).

21          “(d) ANNUAL REPORT ON DEPLOYMENT.—

22          “(1) ANALYSIS REQUIRED.—The Commission  
23          shall include in each of its annual reports submitted  
24          no more than 18 months after the date of enactment  
25          of this section an analysis of the deployment of high

1 speed data service to underserved areas. Such report  
2 shall include—

3 “(A) a statistical analysis of the extent to  
4 which high speed data service has been de-  
5 ployed to central offices and customer loops, or  
6 is available using different technologies, as com-  
7 pared with the extent of such deployment and  
8 availability prior to such date and in prior re-  
9 ports under this subsection;

10 “(B) a breakdown of the delivery of high  
11 speed data service by type of technology and  
12 class or category of provider;

13 “(C) an identification of impediments to  
14 such deployment and availability, and develop-  
15 ments in overcoming such impediments during  
16 the intervening period between such reports;  
17 and

18 “(D) recommendations of the Commission,  
19 after consultation with the National Tele-  
20 communications and Information Administra-  
21 tion, for further extending such deployment and  
22 availability and overcoming such impediments.

23 “(2) DEFINITION OF UNDERSERVED AREA.—  
24 For purposes of paragraph (1), the term ‘under-  
25 served areas’ means areas that—

1           “(A) are high cost areas that are eligible  
2 for services under subpart D of part 54 of the  
3 Commission’s regulations (47 C.F.R. 54.301 et  
4 seq.); or

5           “(B) are within or comprised of any census  
6 tract—

7           “(i) the poverty level of which is at  
8 least 30 percent (based on the most recent  
9 census data); or

10          “(ii) the median family income of  
11 which does not exceed—

12           “(I) in the case of a census tract  
13 located in a metropolitan statistical  
14 area, 70 percent of the greater of the  
15 metropolitan area median family in-  
16 come or the statewide median family  
17 income; and

18           “(II) in the case of a census tract  
19 located in a nonmetropolitan statis-  
20 tical area, 70 percent of the non-  
21 metropolitan statewide median family  
22 income.

23          “(3) DESIGNATION OF CENSUS TRACTS.—The  
24 Commission shall, not later than 90 days after the  
25 date of the enactment of this section, designate and

1 publish those census tracts meeting the criteria de-  
2 scribed in paragraph (2)(B).”.

3 **SEC. 8. COMMISSION AUTHORIZED TO PRESCRIBE JUST**  
4 **AND REASONABLE CHARGES.**

5 The Federal Communications Commission may im-  
6 pose penalties under section 503 of the Communications  
7 Act of 1934 not to exceed \$1,000,000 for any violation  
8 of provisions contained in, or amended by, section 5, 6,  
9 or 7 (or any combination thereof) of this Act. Each dis-  
10 tinct violation shall be a separate offense, and in the case  
11 of a continuing violation, each day shall be deemed a sepa-  
12 rate offense, except that the amount assessed for any con-  
13 tinuing violation shall not exceed a total of \$10,000,000  
14 for any single act or failure to act described in section  
15 5, 6, or 7 (or any combination thereof) of this Act.

16 **SEC. 9. CLARIFICATION OF CONTINUING OPERATION OF**  
17 **ANTITRUST LAWS.**

18 Section 601(b) of the Telecommunications Act of  
19 1996 (Public Law 104-104; 110 Stat. 143) is amended  
20 by adding at the end the following new paragraph:

21 “(4) CONTINUING OPERATION OF THE ANTI-  
22 TRUST LAWS.—Paragraph (1) shall be interpreted to  
23 mean that the antitrust laws are—

24 “(A) not repealed by,

25 “(B) not precluded by,

1                   “(C) not diminished by, and  
2                   “(D) not incompatible with,  
3           the Communications Act of 1934, this Act, or any  
4           law amended by either such Act.”.

## PART B—TEXT OF AMENDMENTS MADE IN ORDER UNDER THE RULE

## 1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE UPTON OF MICHIGAN, OR A DESIGNEE, DEBATABLE FOR 40 MINUTES

At the end of the bill, add the following new section:

**SEC. 9. COMMON CARRIER ENFORCEMENT.**

(a) CEASE AND DESIST AUTHORITY.—Section 501 of the Communications Act of 1934 (47 U.S.C. 501) is amended—

(1) by striking “Any person” and inserting “(a) FINES AND IMPRISONMENT.—Any person”;

(2) by adding at the end the following new subsection:

“(b) CEASE AND DESIST ORDERS.—If, after a hearing, the Commission determines that any common carrier is engaged in an act, matter, or thing prohibited by this Act, or is failing to perform any act, matter, or thing required by this Act, the Commission may order such common carrier to cease or desist from such action or inaction.”.

(b) FORFEITURE PENALTIES.—Section 503(b) of the Communications Act of 1934 (47 U.S.C. 503(b)) is amended—

(1) in paragraph (2)(B)—

(A) by striking “exceed \$100,000” and inserting “exceed \$1,000,000”; and

(B) by striking “of \$1,000,000” and inserting “of \$10,000,000”;

(2) in paragraph (2)(C), by striking “subparagraph (A) or (B)” and inserting “subparagraph (A), (B), or (C)”;

(3) by redesignating subparagraphs (C) and (D) of paragraph (2) as subparagraphs (D) and (E), respectively;

(4) by inserting after subparagraph (B) of paragraph (2) the following new subparagraph:

“(C) If a common carrier has violated a cease and desist order or has previously been assessed a forfeiture penalty for a violation of a provision of this Act or of any rule, regulation, or order issued by the Commission, and if the Commission or an administrative law judge determines that such common carrier has willfully violated the same provision, rule, regulation, that this repeated violation has caused harm to competition, and that such common carrier has been assessed a forfeiture penalty under this subsection for such previous violation, the Commission may assess a forfeiture penalty not to exceed \$2,000,000 for each violation or each day of continuing violation; except that the amount of such forfeiture penalty shall not exceed \$20,000,000.”; and

(5) in paragraph (6)(B), by striking “1 year” and inserting “2 years”.

(c) EVALUATION OF IMPACT.—

(1) EVALUATION REQUIRED.—Within one year after the date of enactment of this Act, the Federal Communications Commission shall conduct an evaluation of the impact of the increased remedies available under the amendments made by this section on improving compliance with the requirements of the Communications Act of 1934, and with the rules, regulations, and orders of the Commission thereunder. Such evaluation shall include—

- (A) an assessment of the number of enforcement proceedings commenced before and after such date of enactment;
  - (B) an analysis of any changes in the number, type, seriousness, or repetition of violations; and
  - (C) an analysis of such other factors as the Commission considers appropriate to evaluate such impact.
- (2) REPORT.—Within one year after such date of enactment, the Commission shall submit a report on the evaluation to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

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2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CANNON OF UTAH, OR A DESIGNEE, DEBATABLE FOR 60 MINUTES

Page 6, beginning on line 5, strike “neither the Commission, nor any State, shall have” and insert “the Commission shall have no”.

Page 6, beginning on line 15, strike “State to regulate circuit-switched telephone exchange services,” and insert “State.”

Page 6, line 13, strike “(b) SAVINGS PROVISION.—” and insert the following:

“(b) SAVINGS PROVISIONS.—

“(1) STATE AUTHORITY.—”

Page 6, after line 18, insert the following new paragraphs:

“(2) EXISTING RULES AND COMPETITION PRESERVED.—Notwithstanding the limitations on Commission and State authority contained in the Internet Freedom and Broadband Deployment Act of 2001 (including the amendments made by such Act), in order to preserve and promote fair competition, innovation, economic investment, and consumer choice, no provision of such Act or amendments shall restrict or affect in any way the application and enforcement of the Federal and State rules in effect on the date of enactment of such Act relating to the rates, charges, terms, and conditions for the purchasing or leasing of telecommunications services and network elements by competitive telecommunications carriers.

“(3) ADDITIONAL COMMISSION AUTHORITY PRESERVED.—Notwithstanding the limitations on Commission authority contained in the Internet Freedom and Broadband Deployment Act of 2001 (including the amendments made by such Act), such Act and amendments shall not restrict or affect in any way—

“(A) the authority of the Commission to adopt regulations to prohibit unsolicited commercial e-mail messages;

“(B) the authority of the Commission to regulate changes in subscriber carrier selections or the imposition of charges on telephone bills for unauthorized services; or

“(C) the authority of the Commission—

“(i) with respect to customer proprietary network information, as provided in section 222;

“(ii) with respect to rules and procedures adopted pursuant to section 223 to restrict the provision of pornography to minors and unconsenting adults; or

“(iii) with respect to access by persons with disabilities, as provided in section 255.

Page 7, beginning on line 11, strike “neither the Commission nor any State shall require” and insert “the Commission shall not require”.

Page 12, beginning on line 23, strike “Internet access” and insert “such”.

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BUYER OF INDIANA, OR A DESIGNEE, AS A SUBSTITUTE FOR THE AMENDMENT NUMBERED 2, TO BE OFFERED BY REPRESENTATIVE CANNON OF UTAH, OR A DESIGNEE, DEBATABLE FOR 60 MINUTES

Page 6, beginning on line 9, strike “, or to regulate any network element to the extent it is used in the provision of any such service”.

Page 7, strike line 7 and all that follows through line 2 on page 9 and insert the following:

“(j) GUARANTEED ACCESS TO CONSUMERS FOR CLECS.—

“(1) ACCESS RULES.—

“(A) PRESERVATION OF RULES GUARANTEEING CLEC ACCESS TO INCUMBENT CARRIER FACILITIES.—Except as provided in subparagraph (E), the Commission is not required to repeal or modify the regulations in effect on May 24, 2001, that enable a requesting carrier to use the facilities of an incumbent local exchange carrier to provide high speed data services.

“(B) TRANSPORT SERVICES AVAILABLE TO CLECS.—

“(i) OFFERING REQUIRED.—If an incumbent local exchange carrier provides high-speed data services over a fiber local loop or fiber feeder subloop, that carrier shall offer, over such loop or subloop for delivery at the incumbent local exchange carrier’s serving central office, a high speed data service that is provided by such carrier utilizing an industry-standard protocol.

“(ii) TRANSMISSION OPTIONS.—Such service shall enable a requesting carrier to transmit information over an incumbent local exchange carrier’s facilities between that incumbent local exchange carrier’s serving central office and (I) a customer’s premises served by that serving central office; (II) a remote terminal supplied by the requesting carrier; or (III) a high frequency portion of the copper subloop obtained by such requesting carrier pursuant to the provisions of subsection (c)(3).

“(iii) RATES, TERMS, AND CONDITIONS.—Such high speed data service shall be offered on rates, terms, and conditions that are just and reasonable in accordance with section 201(b). For such purposes, such high speed data service shall be deemed a nondominant service.

“(iv) SERVING CENTRAL OFFICE DEFINITION.—For the purpose of this subparagraph, the term ‘serving central office’ means the centralized location where the incumbent local exchange carrier has elected to pro-

vide access to the high speed data service required by this subparagraph.

“(C) SPACE ADJACENT TO AN INCUMBENT’S REMOTE TERMINAL.—Subparagraph (E)(iii) does not relieve an incumbent carrier of any obligation under regulations in effect on May 24, 2001, to provide space adjacent to its remote terminal to a requesting carrier so that the requesting carrier may construct its own remote terminal.

“(D) CLEC ACCESS TO INCUMBENT CARRIER RIGHTS-OF-WAY.—Any incumbent local exchange carrier has the duty to afford access to its poles, conduits, and rights-of-way in accordance with subsection (b)(4) for provision of high speed data service.

“(E) SCOPE.—Notwithstanding any provision of law, neither the Commission nor any State shall—

“(i) require an incumbent local exchange carrier to provide unbundled access in accordance with subsection (c)(3) to any packet switching network element;

“(ii) require an incumbent local exchange carrier to provide, for the provision of high speed data service, access on an unbundled basis in accordance with subsection (c)(3) to any fiber local loop or fiber feeder subloop; or

“(iii) require an incumbent local exchange carrier to provide for collocation in accordance with subsection (c)(6) in a remote terminal, or to construct or make available space in a remote terminal.

“(F) REINTERPRETATION.—Consistent with subparagraph (E), neither the Commission nor any State shall construe, interpret, or apply this section in such a manner as to expand an incumbent local exchange carrier’s obligation, as in effect on May 24, 2001, to provide access in accordance with subsection (c)(3) to any network element for the provision of high speed data service, or to provide collocation in accordance with subsection (c)(6) for the provision of high speed data service.

Page 9, lines 3 and 15, redesignate subparagraphs (E) and (F) as subparagraphs (G) and (H), respectively.

Page 10, beginning on line 11, strike paragraph (3) through page 11, line 3, and insert the following:

“(3) DEFINITIONS.—For purposes of this subsection—

“(A) the term ‘fiber feeder subloop’ means the entirely fiber optic cable portion of the local loop between the feeder/distribution interface (or its equivalent) and a distribution frame (or its equivalent) in an incumbent local exchange carrier central office, including all features, functions, and capabilities of such portion of the local loop;

“(B) the term ‘fiber local loop’ means an entirely fiber optic cable transmission facility, including all features, functions, and capabilities of such transmission facility, between a distribution frame (or its equivalent) in an incumbent local exchange carrier central office and the loop demarcation point at an end-user customer premise;

“(C) the term ‘packet switching network element’—

“(i) means a network element that performs, or offers the capability to perform—

“(I) the basic packet switching function of routing or forwarding packets, frames, cells, or other data units based on address or other routing information contained in the packets, frames, cells, or other data units, including the functions that are performed by digital subscriber line access multiplexers; or

“(II) any successor to the functions described in clause (i);

“(ii) includes such element on a stand-alone basis, or as a part of a combination with one or more other network elements; and

“(iii) does not include elements of the signaling system 7 network transmitting signaling information between switching points;

“(D) the term ‘remote terminal’ means a controlled environment hut, controlled environment vault, cabinet, or other structure at a remote location between the central office and a customer’s premises; and

“(E) the term ‘signaling system 7 network’ means the network that uses signaling links to transmit routing messages between switches and between switches and call related data bases.”.

Page 7, line 3, strike the close quotation marks and the following period, and after such line insert the following:

“(d) ADDITIONAL COMMISSION AUTHORITY PRESERVED.—Notwithstanding subsection (a), such subsection shall not restrict or affect in any way the authority of the Commission—

“(1) to adopt regulations to prohibit unsolicited commercial e-mail messages;

“(2) to regulate changes in subscriber carrier selections or the imposition of charges on telephone bills for unauthorized services; or

“(3) with respect to—

“(A) customer proprietary network information, as provided in section 222;

“(B) with respect to rules and procedures adopted pursuant to section 223 to restrict the provision of pornography to minors and unconsenting adults; or

“(C) with respect to access by persons with disabilities, as provided in section 255.”.

Page 6, line 12, insert before the period the following: “that is not imposed or required on the date of enactment of this section”.